

No. PD-0207-18

In the Court of Criminal Appeals of Texas
At Austin

FILED
COURT OF CRIMINAL APPEALS
8/13/2018
DEANA WILLIAMSON, CLERK

No. 01-16-00434-CR

In the First Court of Appeals at Houston

No. 1472750

In the 338th District Court
Of Harris County

Damon Orlando Milton

Appellant

v.

The State of Texas

Appellee

**State's First Motion for Extension
Of Time to File Appellate Brief**

To the Honorable Court of Appeals:

The State of Texas asks for a 15-day extension of time in which to file its brief on discretionary review. The following facts are relevant:

1. The appellant was indicted for robbery. (CR 11). The indictment alleged two prior felony convictions, one for an offense committed after the other conviction became final. (CR 11). The appellant

pleaded not guilty but a jury found him guilty as charged. (CR 58). The jury found both enhancement paragraphs true and assessed punishment at fifty years' confinement. (CR 68, 74). The trial court certified the appellant's right of appeal and the appellant filed a notice of appeal. (CR 77, 79).

2. On direct appeal a unanimous panel of the First Court of Appeals affirmed the appellant's conviction and sentence. *Milton v. State*, No. 01-16-00434-CR, 2017 WL 3633570 (Tex. App.—Houston [1st Dist.] Aug. 24, 2017, pet. granted) (mem. op. not designated for publication). The appellant filed a motion for *en banc* reconsideration, which was denied with two justices dissenting. *Milton v. State*, 546 S.W.3d 330, 330, 340 (Tex. App.—Houston [1st Dist.] 2018, pet. granted) (Jennings, J., and Bland, J., dissenting to denial of *en banc* reconsideration). This Court granted discretionary review.
3. The State's brief is due on August 13, 2018.
4. This is the State's first request for extension.
5. Since the appellant filed his brief on discretionary review on July 13, 2018, the undersigned attorney has worked on the following appellate cases:

- a. Joe Gordon
No. 01-17-00447-CR
Brief filed July 18, 2018
- b. *Ex parte* Matthew Leachman
No. 01-16-00787-CR
Requested response to motion for rehearing filed
July 24, 2018
- c. Miguel Yopez
No. 14-17-00590-CR
Brief filed August 3, 2018

- 6. The undersigned attorney has three other active cases assigned to him and is attempting to submit briefs in a timely manner. The undersigned attorney has been working on this case in a good faith effort to meet the current deadline, but was unable to do that.
- 7. The undersigned attorney did not handle this case on direct appeal, thus he started work on this case with less knowledge of the record than is typical for a case on discretionary review.

WHEREFORE, the State prays that this Court will grant the requested extension.

Respectfully submitted,

/s/ C.A. Morgan

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Date: August 13, 2018